

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Reciprocal Compensation for CMRS Providers)

CC Docket Nos. 96-98, 95-185

WT Docket No. 97-207

REPLY COMMENTS OF WESTERN WIRELESS CORPORATION

Western Wireless Corporation ("Western Wireless"), by its undersigned counsel, hereby submits these Reply Comments in support of the Petition by Sprint Spectrum L.P. ("Sprint") seeking an order clarifying the rules governing payment of reciprocal compensation to providers of commercial mobile radio service ("CMRS").

INTRODUCTION AND SUMMARY

The principal opponents of Sprint's Petition are a predictable group: three incumbent local exchange carriers ("ILECs") (BellSouth, US West, and GTE) and their trade association (the U.S. Telecom Association).¹ Though couched in the rhetoric of abstract micro-economic theory, the real motivation underlying their opposition is not difficult to understand: the ILECs seek to preserve the existing compensation structure, which gives them an unfair competitive advantage over CMRS competitors. Given this underlying motivation, it is not surprising that the arguments raised in opposition to Sprint's Petition contain numerous flaws. For the reasons explained below, the Commission should see through these fallacious arguments, and clarify that CMRS providers are entitled to reciprocal compensation that reflect the distinct characteristics of CMRS networks.

¹ Only one competitive carrier (AT&T) filed opposition comments, the manifest defects of which are addressed below.

ARGUMENT

I. CMRS And Landline Networks Are Not “Economically Similar” In The Manner the ILECs Contend

The primary (but erroneous) argument the ILECs make against Sprint’s Petition can be paraphrased as follows: Sprint’s Petition, the ILECs maintain, rests on the proposition that “shared” facilities are inherently “traffic sensitive,” while dedicated facilities are not. This logic – which is *not* the crux of Sprint’s argument – is undermined, the ILECs contend, by the fact that, although landline and CMRS networks use different technologies, they employ network elements that perform similar functions, and use shared facilities in the similar ways (*i.e.*, for transport). Viewed in this manner, the ILECs contend, landline networks’ call termination facilities are “traffic sensitive” in the same manner as CMRS carriers’ in that both have capacity limitations that must be upgraded over time. Sprint’s Petition allegedly errs, the ILECs argue, by using the incorrect time-frame. Viewed in the long-term, all costs are variable, including those of CMRS providers and the ILECs.²

This multi-part argument fails for at least two related reasons: first, it misapprehends the important functional differences between landline and CMRS networks. Second, it ignores the legal and economic underpinnings of the Commissions ruling in paragraph 1057 of the *First Local Competition Order*.³ Beginning with the law, section 252(d)(2)(A)(ii) of the Act provides that carriers may recover the “*additional cost*” of transporting and terminating traffic (emphasis added). Subsection (2)(A)(ii) serves to identify the categories of costs that can be recovered; it is not a pricing rule. (TELRIC still governs the calculation of reciprocal compensation payments.) Thus,

² See Comments of Bellsouth at 6-10; Comments of U S West Communications, Inc. at 7-17.

³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 (rel. Aug. 8, 1996) (“*First Local Competition Order*”).

subsection (2)(A)(ii) identifies those functions for which reciprocal compensation may be assessed, which the FCC has interpreted to encompass only those functions which are traffic sensitive – *i.e.*, those that directly cause added costs. Because the ILECs are correct that, in the long run, all network functions are “traffic sensitive,” subsection (2)(A)(ii) must limit reciprocal compensation to short-run variable costs. It is for that reason that paragraph 1057 distinguishes between short-term, variable costs, *e.g.*, trunking and tandem switching (recoverable), and short term, fixed costs, *e.g.*, the local loop (not recoverable). The ILECs have plainly overlooked this crucial distinction.⁴

The economic characteristics of call termination for CMRS providers and landline ILECs are thus completely different. Landline ILECs provide their customers with access to the public switched network through loop and other facilities that provide a direct and immobile connection between a given customer and the central office switch. The ILECs freely admit that they do not incur short run (*i.e.*, “additional”) costs for these network elements. Moreover, the fixed costs of the local loop are incurred on a per subscriber basis, and as such reflect primarily non-traffic sensitive costs. The fact that certain ILEC plant functions are “shared” by several end-users does not alter this fact. For example, some landline network costs, such as poles and conduit, vary in cost as a function of factors other than the number of subscribers (*e.g.*, distance). Others are traffic sensitive (*e.g.*, SONET rings, fiber feeder, remote digital concentrators/subscriber carrier). Yet all these costs are priced as costs

⁴ This lack of understanding is exemplified by Bellsouth’s curious claim that the Commission “dr[ew] the line at the end office switch for reciprocal compensation purposes” and that “the same line should be drawn at the mobile switching center in the CMRS provider’s network.” Bellsouth Comments at 7. This statement implies that the Commission’s order is the result of arbitrary line drawing. Indeed, the ILECs offer no reasoned explanation for why the Commission “drew the line at the end office switch for reciprocal compensation purposes.” It should not be surprising, therefore, that they do not advance a cogent argument for why a similar line should be drawn at the call-termination facilities employed by CMRS providers.

associated with providing individual end-users with access to the public switched network, and as such are developed (and allocated by TELRIC pricing models) on a per subscriber basis.

The majority of costs of a CMRS provider's network, on the other hand, are for facilities whose costs increase as volumes increase. Western Wireless' own build-out practices, which are typical of the best practices in the industry (and thus comply with TELRIC principles) are illustrative of the short-run costs facing CMRS providers. When Western Wireless builds a network, it constructs cell sites that will accommodate estimated usage growth for a relatively short period of time – usually 18-24 months. As usage within the coverage area of a cell site increases, Western Wireless adds radio channels to that site. In some cases, the next step to accommodate increased usage is to convert an omni-directional cell site (a radio signal transmitted in all directions) into a sectorized cell site using directional antennas, effectively making three cells from one tower or rooftop location. Eventually, as usage increases, a sectorized cell site with the maximum number of channels will need to be “split” by adding an entirely new site location, which would require a new rooftop or tower, site preparation, antennas, and buildings. The new site would be added to permit additional usage of a location area where Western Wireless already provides coverage. Because of limitations, however, additional capacity is necessary to permit additional coverage and access. Thus, a CMRS carrier incurs recurring, short-term, traffic-sensitive costs to maintain access levels in given areas that wireline carriers do not.

Moreover, the gross functional comparisons between CMRS call termination processes and landline local loops made by the ILECs provide no support for denying CMRS providers compensation for air time and other call-termination expenses. While both landline and CMRS call termination processes transport traffic to end-users, the similarities end there. Unlike their landline counterparts, CMRS networks do not provide a “fixed path” between a customer and the switch, not even for the

duration of a call (as many, if not most, are handed off between cell sites). Spectrum is provided to the customer only for the duration of the call and stops upon completion of the call. This functionality more closely resembles landline carriers' use of trunk circuits and the switch matrix – both of which incur costs on the basis of traffic volume, and as such, are compensable under the Commission's existing reciprocal compensation rules.

Finally, the Commission should reject the argument that the costs ILECs incur installing additional lines resembles the costs CMRS providers face expanding network capacity.⁵ This argument confuses the coverage requirements of wireless networks with the access requirements of landline carriers. For landline ILECs, access is provisioned through the loop and other fixed facilities that provide a direct connection between a given customer and the central office switch. CMRS providers, on the other hand, provide access by assuring sufficient geographic coverage. As discussed above, however, assuring customer access for CMRS providers is also a function of providing sufficient network capacity.

Thus, the costs ILECs allegedly incur installing additional lines are fundamentally different from the costs incurred by CMRS providers to expand their networks. The former are incurred by the ILECs in the long-run to augment service to customers who already have access to the public switched network. The latter are required in the short run for CMRS providers to insure that existing customers continue to have access in the first place.

II. CMRS Providers Are Entitled To The Full Tandem Rate

Western Wireless' Opening Comments emphasized the importance of affirming the application of the Commission's existing rules. These rules provide that for CMRS providers that

⁵ Whether landline carriers, in fact, face the obstacles described in the ILECs' opposition comments, in light of the new line sharing technologies, is not addressed in these Reply Comments.

demonstrate that their switching centers “serve a geographic area comparable to the area served by the incumbent LEC’s tandem switch ... the appropriate [reciprocal compensation] rate is the incumbent LEC’s tandem interconnection rate.” 47 C.F.R. § 51.711(a)(3); *see generally* Western Wireless Opening Comments at 7-9.

Western Wireless further noted that it is aware of several state arbitration decisions in which incumbent LECs have sought to evade the plain language of subsection (a)(3) by seeking to limit the tandem interconnection rate based on a functional analysis of a CMRS providers’ network. Western Wireless asked the Commission to clarify that such issues are irrelevant, *i.e.*, that if carriers meets the “comparable geographic area” test of subsection (a)(3) – as most always will – then they are entitled to receive the tandem interconnection rate.

The “functionality” analysis presented in the previous section of these Reply Comments provides additional support for Western Wireless’ position. A correct assessment of the functionality of the relevant CMRS network elements demonstrates that the cost incurrence patterns of CMRS call termination processes more closely resembles landline carriers’ use of trunk circuits and tandem switching than those of landline local loops. This analysis provides additional support for faithfully applying the Commission’s rules. It demonstrates that the tandem rate should be available to CMRS providers based both on the geographic area covered by, and the functional characteristics of CMRS networks.

III. Asymmetrical Rates Do Not Violate TELRIC Principles

AT&T and Bellsouth contend that the asymmetrical rate structures necessary to compensate CMRS providers for the “additional costs” of terminating calls originated on other networks violate

TELRIC pricing principles.⁶ Specifically, AT&T argues that TELRIC “does not cover the idiosyncratic costs of each and every carrier,”⁷ and that “certain carriers [are not entitled] to charge higher reciprocal compensation rates simply because they have chosen a more expensive technology or a technology that employs relatively more usage sensitive components,” *id.* at 5.

The problem with this argument is simple: carried to its logical conclusion, it would preclude the asymmetrical rate structure expressly contemplated in the Act and the Commission’s rules. As Western Wireless explained in its Opening Brief, the presumption of symmetry established in the *First Local Competition Order* was adopted for administrative convenience and to relieve new entrants of the burden of preparing their own cost studies.⁸ The Commission expressly recognized, however, that some carriers may have higher cost structures, and established a procedure whereby these carriers – including CMRS providers – could petition state commissions to arbitrate claims to establish asymmetrical rate structures. *Id.* ¶ 1089. AT&T’s and BellSouth’s comments do not even address the implications of these arguments for the Commission’s asymmetrical compensation rules, which serves to underscore the argument’s spuriousness.

IV. A Commission Ruling On Sprint’s Petition is Necessary

Of course, to obtain asymmetrical rates, CMRS providers must submit forward-looking economic cost studies to rebut the presumption of symmetry. *Id.* As Western Wireless acknowledged

⁶ See Comments of AT&T Corp. at 2-5; Comments of Bellsouth at 10-12.

⁷ AT&T Comments at 2.

⁸ *First Local Competition Order*, ¶ 1088-89. There is no indication that the “Commission expressed a strong preference favoring symmetrical reciprocal compensation rates.” Comments of Bellsouth at 3. Rather the default symmetrical regime established in *First Local Competition Order* is simply a presumption, that, like any other presumption, can be rebutted by showing that the preponderance of the evidence supports asymmetrical rates.

in its opening comments, it has filed one such study,⁹ and the commenters identified an additional example.¹⁰

However, the fact that few carriers have sponsored cost studies does not eliminate the need for Commission action in this proceeding. First, carriers were effectively precluded from filing such studies from October 1996 until last year, when the Supreme Court lifted the Eighth Circuit's stay of the Commission's pricing rules.¹¹ More such studies will undoubtedly be submitted in the coming months if carriers conclude that symmetrical rates do not adequately cover the costs for transport and termination of another carrier's traffic (and the cost of sponsoring such a study does not exceed the potential benefits of cost-based rates).

Second, as the numerous comments filed in this proceeding aptly demonstrated, there is a sharp dispute over the proper treatment of CMRS providers' transport and termination costs. Simply leaving this unresolved legal issue for resolution by the states will lead to unnecessary confusion and uncertainty, and almost certainly, a patchwork of conflicting decisions.

⁹ See Western Wireless Opening Comments at 4 and n.4 (citing *Proceeding on Communications, Including an Investigation of the Communications Infrastructure of the State of Hawaii*, Docket No. 7702 (Hawaii Public Utilities Commission)).

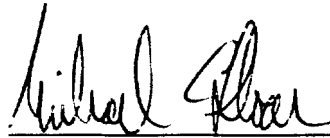
¹⁰ See U S West Comments at 5 n.3 (citing *Petition of AirTouch Paging, Inc., for Arbitration of an Interconnection Agreement with U S West Communications, Inc. Pursuant to 47 U.S.C. § 252*, Decision Regarding Petition for Arbitration, Dkt. No. 99A-001T (Colorado PUC April 23, 1999)).

¹¹ See *AT&T Corp. v. Iowa Util. Board*, 525 U.S. 366 (1999), reversing in relevant part, 120 F.3d 753 (1997).

CONCLUSION

For the foregoing reasons, the Commission should approve Sprint's Petition and issue an order clarifying (1) that CMRS providers are entitled to all the traffic-sensitive costs associated with terminating local traffic originated on other networks, and (2) that the Commission's existing reciprocal compensation regulations, particularly section 51.711(a)(3), apply with full force and effect to CMRS carriers.

Respectfully submitted,



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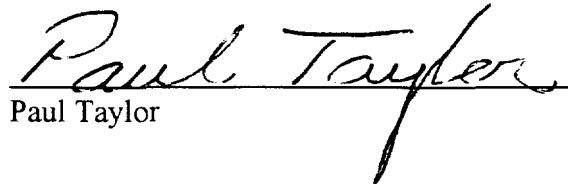
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CERTIFICATE OF SERVICE

I, Paul Taylor, hereby certify that on June 13, 2000, I caused to be served upon the following individuals the Reply Comments of Western Wireless Corporation in CC Docket Nos. 96-98, 95-185; of WT Docket No. 97-207:


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